

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 1174 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE D.G.KARIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

BIPINCHANDRA MAFATLAL SHAH

Versus

HIMATLAL AMRATBHAI PATEL

Appearance:

Mr.Sanjay Doshi, Amicus Curiae, for the Petitioner.

MR JR NANAVATI for Respondent No. 1

PUBLIC PROSECUTOR for Respondent No. 2

CORAM : MR.JUSTICE D.G.KARIA

Date of decision: 07/03/96

ORAL JUDGEMENT

This Criminal Revision Application is preferred by the petitioner who is the original accused against the judgment and order of conviction and sentence passed by

the learned Metropolitan Magistrate, 6th Court, Ahmedabad, in Criminal Case No.8318 of 1981 on 28.2.1983 and confirmed by the learned Addl. City Sessions Judge, 8th Court, Ahmedabad on 29.6.1982 in Criminal Appeal No.37 Of 1983. The said Criminal Revision Application was preferred by the accused through his Advocate through Advocate Mr.H.K.Thakore. On demise of Mr.H.K.Thakore, the petitioner was issued a notice to the effect that his Advocate had expired and asking him to appoint another Advocate in the matter or to remain present before this Court. However, the notice could not be served and it was returned unserved with the remark that the address of the petitioner, Bipinchandra Mafatlal Shah, was not sufficient and there is no office of Avinash Estate Owners Association between Income Tax and Nehru Bridge area. Under the circumstances, it is difficult to trace the whereabouts of the petitioner. It is also painful to note that for last more than one decade, the petitioner has not bothered to inquire about his pending petition, though his Advocate had expired long back. The petitioner being not available and traceable and the matter being pretty old, there was no alternative but to appoint another Advocate for the Petitioner who could render assistance to the Court. Accordingly, Mr.Sanjay Doshi, an Advocate practising in this Court, was appointed. He having gone through the impugned judgment and record, has made his submissions.

The prosecution-case is that the petitioner was the President of Avinash Estate Owners Association which owned the property bearing Final Plot No.581/1 in Town Planning Scheme No.3 of Ellisbridge Area in Ahmedabad. The petitioner submitted a plan bearing No.B/3/688 for the construction of premises over this piece of land. It is alleged that the petitioner without obtaining the requisite permission constructed 28 R.C.C. Pillars and the slab thereover on the ground floor and 15 R.C.C. pillars on the beam and the slabs over them on the first floor. The petitioner-accused carried out the constructions upto the slab level on the first floor. The accused did not obtain any written permission of the Municipal Commissioner for the same. As the said construction was carried out without permission of the Municipal Commissioner, the petitioner-accused was served with an injunction on 25.8.1981 under sub-sec.(1) of section 267 of the Bombay Provincial Municipal Corporation Act, 1949 (hereinafter referred to as the 'said Act') restraining him from carrying out further construction. Despite the injunction being served on the accused, he carried out the construction and thereby committed breach of injunction. Eventually, two

complaints--one under sub-rule (1) of Rule 6 of Chapter 12 of the said Act punishable under clause (1) of Rule 1 of Chapter 19 and another for breach of injunction under sub-sec.(1) of sec.267 of the said Act punishable under sub-section (1) of sec.392 of the said Act--were filed against the accused.Both these complaints are numbered as Criminal Cases No.9318/81 and 3736/82 respectively. The accused was acquitted in the case for breach of injunction, i.e. in Criminal Case No.3736/82. However, the petitioner-accused having been convicted and sentenced in Criminal CaseNo.9318/81, appeal was filed in the City Sessions Court at Ahmedabad challenging the judgment and order of the said conviction.

The learned Additional City Sessions Judge, 8th Court, Ahmedabad, partly allowed the appeal acquitting the petitioner-accused of the charges of breach of clauses (a) and (d) of sub-rule (1) of rule 6 of Chapter 12 of the said Act. However, the petitioner-accused was found to be guilty for the breach of clause (b) of sub-rule (1) of Rule 6 of Chapter 12 of the said Act punishable under Rule 1 of Chapter 19 of the said Act and was ordered to pay fine of Rs.1,000/-, in default to undergo one month's simple imprisonment for the said offence.

The petitioner has preferred the present Revision Application against the aforesaid order of conviction and sentence. On the sad demise of Mr.H.K. Thakore,. a notice was issued to the petitioner and the notice returned unserved, as aforesaid.

Mr.Sanjay Doshi, learned Advocate appointed as amicus curiae to assist the Court, contended that the petitioner-accused could not have been convicted for the offence punishable under Chapter 19 for breach of clause (b) of sub-rule (1) of rule 6 of Chapter 12 of the said Act, for no permission would be necessary once the plans were submitted and it should be deemed to have been granted. I see no merit in this submission, nor there is any illegality so as to invoke the revisional powers of this Court. The prosecution case was that the construction is carried out without permission. It transpires from the evidence that the plans are not sanctioned by the complainant-Corporation and that no permission was granted for the alleged construction. In fact, the accused admitted the same. The petitioner could not specify any date on which the construction was commenced. However, from the record it is evident that the construction was so commenced after 25.5.1981. The accused is required to give a notice to the City Engineer

of the complainant-Corporation in respect of the proposed date of commencement under clause (b) of sub-rule (1) of rule 6 of Chapter 12 of the said Act. It is the precise case of the complainant-Corporation that the construction was carried out without permission as required under the relevant provisions of the Act. It would, therefore, follow that no notice to the City Engineer in regard to the proposed date of commencement of work was ever given. Thus, there is a clear breach of clause (b) of sub-rule (1) of rule 6 of Chapter 12 of the said Act. The learned Magistrate has rightly convicted the accused for the said breach and the lower appellate Court has also rightly confirmed the said conviction.

There is no infirmity or any discrepancy in the judgment of the appellate Court confirming the conviction for breach of clause (b) of sub-rule (1) of rule 6 of Chapter 12 of the said Act, nor any such infirmity is pointed out on behalf of the petitioner.

In the above view of the matter, there is no merit in the revision application and it is liable to be rejected. The Revision Application is, therefore, rejected. Rule discharged.
